

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4751 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

AHMEDABAD MUNICIPAL CORPN

Versus

M.V. MANKAD

Appearance:

MR JR NANAVATI AND AR THAKKER for Ahmedabad
Municipal Corporation

None appeared on behalf of the respondent despite
service

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/04/99

ORAL JUDGEMENT

This Special Civil Application directed against

the order dated 20th July, 1983 passed in M.V.Appeal 1338 of 1981 by the Small Causes Court at Ahmedabad is pending since 1983.

2. It appears that the property in question is a flat in Block No.3 in Pragatinagar Ward, Vadaj, Ahmedabad bearing final plot No.252/246/267/M/3/17 in Vadaj Ward No.A/1. The same was occupied by the Officers of the State of Gujarat for a payment of rent at the rate of Rs.400/- inclusive of municipal taxes. After giving special notice No.308 dated 18th February, 1982, the gross rateable value was assessed at Rs.6,000/-. The said order was appealed against under sec.406 of the BPMC Act and M.V.Appeal, as filed by the respondent herein being M.V.Appeal No.1388 of 1981, was allowed by the Small Causes Court at Ahmedabad on 20th July, 1983 whereby the Small Causes Court fixed the rateable value at Rs.605/-for 1980-81.

3. We have heard learned counsel for the petitioner-Municipal Corporation of the City of Ahmedabad and have gone through the impugned order dated 20th July, 1983. A reading of this order shows the total lack of application of mind while passing the impugned order. Without any material and without giving any reason to the facts of the present case, a bald reference was made that the appellant, i.e. the respondent herein (Mr.M.V.Mankad) had earlier filed a M.V. Appeal No.449 of 1982 against the assessment of 1981-82 and it was decided on 2-12-1982 by the Small Causes Court No.2, holding that the entire assessment was bad in law and in-operative and so the entire assessment was quashed. Even if it is taken that in M.V.Appeal No.449 of 1982 on 2-12-1982, the entire assessment had been quashed by the Small Causes Court No.2, it is now settled by a Division Bench decision of this Court reported in 1994(2) GLR page 1498 that even if the Small Causes Court comes to the conclusion that assessment is to be quashed, the Small causes Court itself should determine the rateable value in accordance with law. In this view of the matter, the impugned order dated 20th July, 1983 cannot be sustained in the eye of law. Besides this, we find that in the impugned order dated 20th July, 1983, the Court has also acceded to the alternatively fixed rateable value of the premises in question at the rate of Rs.605/- for which there was no material or justification except the purshis exh.8 filed by the respondent himself. Besides this, it is the case of the appellant-Municipal Corporation that in M.V.Appeal No.449 of 1982 which was earlier decided on 2-12-1982 the assessment was based on the owner's self-occupation whereas in the present case, the premises

were rented out to the Officers of the State of Gujarat and this fact by itself should have made a marked difference and should have had its own impact. It is also surprising that the learned counsel appearing on behalf of the Municipal Corporation did not bring this fact to the notice of the Small Causes Court that in the earlier case, the premises were self-occupied whereas in the instant case, the premises were rented out. Thus, the whole basis on which the earlier judgment dated 2-12-1982 was invoked and applied is misplaced. Merely because the respondent Mr. M.V. Mankad had given a promise that he will not press the other points for quashing the entire assessment of 1980-81, and that he had no objection if the rateable value is fixed at Rs.605/- for 1980-81 could not be the basis for making the same to be decisive by the Court. The respondent could not have had any objection if the rateable value was reduced from Rs.5,000/- to Rs.605/-, i.e. merely 1/10th of what had been fixed by the Municipal Corporation. In such cases, the party which approaches the appellate Court for challenging the rateable value fixed by the authorities of the Municipal Corporation is under a heavy burden to show by cogent material that the gross rateable value had been wrongly fixed by the Municipal Corporation.

4. We find that the impugned order dated 20th July, 1983 shows total non-application of mind and cannot be sustained in the eye of law. This order dated 20th July, 1983 passed in M.V. Appeal No.1338 of 1981 is hereby quashed and set aside and as a consequence of it, the gross rateable value as has been fixed by the Municipal Corporation at the rate of Rs.6,000/- stands restored. This Special Civil Application is accordingly allowed. Rule is made absolute. No order as to costs.

...
radhan/